

REMARKS

The Office Action mailed April 27, 2005 has been carefully considered. Claims 1, 2, 10 and 16-18 have been amended, and the application still contains claims 1-18. As the number of independent claims and the total number of claims have not changed, no additional fee is required.

Election/Restrictions

During a telephone conversation with the Examiner on April 14, 2005 and in the Office Action, the Examiner required that Applicant elect for prosecution either the invention disclosed in claims 1-16 or the invention disclosed in claims 17 and 18, which the Examiner indicated were distinct. Applicant hereby traverses this restriction requirement. There is a strong public policy to retain all embodiments of an invention in a single application to permit others to be able to refer to a single patent rather than a multiplicity of patents. Further, judicial and PTO economy mandate that all such features of an invention should be included and prosecuted together in a single application.

Applicant disagrees that the product as claimed can be made by another and materially different process and therefore believes that the subject restriction requirement should be withdrawn.

Should the Examiner continue to maintain this restriction requirement, Applicant provisionally elects for continued prosecution Invention I, which invention is currently described in Claims 1-16.

Claim Objections

The Examiner objected to claim 10 because it recites “of claim 5” rather than “of claim 1.” Amendment of the claims to rectify this error has been made.

Claim Rejections

Claims 1, 2 and 10 were rejected under 35 U.S.C. §102(b) as being anticipated by Carlson (U.S. Patent No. 803,741). Claims 11-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carlson in view of Gibbs et al. (U.S. Patent No. 6,811,145). Claims 1-10 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ravert (U.S. Patent No. 1,426,215) in view of Carlson. Claims 11-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ravert in view of Carlson and further in view of Gibbs et al. Claims 1-4, 7-10 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Friend (U.S. Patent No. 2,074,688) in view of Carlson. Finally, claims 11-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Friend in view of Carlson and further in view of Gibbs et al.

The references cited by the Examiner fail to teach or suggest such a unique combination as described in the claims of the present application, as amended. The patent to Carlson was cited by the Examiner to show a decorative fencing system comprising a stake, a post and structural fencing components. However, it should be appreciated that the system of Carlson differs significantly from the system of the present invention. First and foremost, the stake of Carlson does not in fact include a sleeve into which the post is slidably inserted, but rather, the stake and post are attached together as one piece (Col. 1, ll. 42-45). The significance of this distinction cannot be understated. In the system of the present invention, the stake is pounded into the ground to provide support for the entire system, and the rods may then be slid into the

stakes. Since a great deal of force may be required to force the stakes into the ground, it is possible that some damage could be done to the stakes, which damage would not be readily visible since the stakes are in the ground. With the system of Carlson, however, the rod and stake are forced into the ground together, requiring considerable force to be applied to the top of the rod, thereby exposing either the ornamental top or the top of the rod to damage.

Furthermore, the system of the present invention allows the individual fence components to be placed on the stakes themselves, using gravity to keep them in place, and then have the rods inserted through the collars to keep the fence components tied together. While slightly unwieldy because of their length, the rods may easily be manipulated and inserted into the collars. In the system of Carlson, however, the rods are placed in position first, thereby requiring the individual fence components to be lifted and manipulated over the tops of the rods, a feat that is difficult to say the least and potentially dangerous should one of the sections fall.

Another distinction is that the system of Carlson requires the individual components to be attached to the posts by means of a compression ring. No such attachment means is required in the present system, which greatly facilitates the repositioning of the fencing elements.

The patent to Ravert was cited by the Examiner to show a decorative fencing system including a footing adapted to be fastened to the ground, a post and structural components. The Examiner concedes that the system of Ravert discloses the use of a footing rather than a stake, and it should be appreciated that the footing is far less effective at retaining the post in place, as it may easily be moved or toppled over. Furthermore, the Examiner's reliance on Carlson to disclose a stake and sleeve is misplaced, as was discussed previously.

Finally, the patent to Friend was cited by the Examiner to show a stake post and structural component attached thereto. Here too, the Examiner concedes that Friend fails to disclose a

system comprising a stake including a stake sleeve and a separate post, the post being adapted to be slidably inserted within and retained by the stake sleeve. The Examiner once again relies on Carlson to show the stake sleeve. The Examiner also erroneously states that the stake and post in Carlson are separate elements, which is neither disclosed nor suggested by Carlson. In fact, as has been previously discussed, the stake and post of Carlson are indicated as being part of a unified whole.

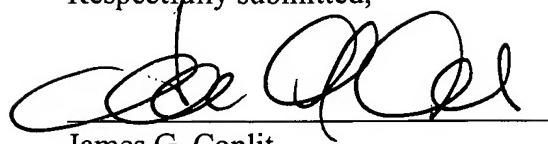
The other references cited by the Examiner have been considered, but do not teach or suggest the unique system and method disclosed and claimed herein by amendment.

For the aforementioned reasons, applicant submits that amended claim 1 patentably distinguishes over the references cited by the Examiner taken alone or in combination. None of these references teach or suggest the unique combination of the stake and stake sleeve, separate from a post that can be inserted therein, and the component fencing elements which sit upon the stake sleeve and are attached to each other by means of the post. Independent claims 16 and 17 have similarly been amended so as to include the same limitations provided in claim 1 (amended) and therefore patentably distinguish over the references cited by the Examiner.

Applicant further submits that dependent claims 2-15 and 18 patentably distinguish over the references of record for the same reason as claims 1 and 17 (amended), and are therefore also in condition for immediate allowance.

In light of the amendments and remarks, Applicants respectfully submits that this application is now in condition for allowance, and an early Notice of Allowance is hereby respectfully requested.

Respectfully submitted,



James G. Coplit
Reg. No. 40,571
Attorney for Applicant